

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE \$5,809.65 IN U.S. CURRENCY

No. 2 CA-CV 2014-0059
Filed November 24, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pinal County
No. S1100CV201203044
The Honorable Karen J. Stillwell, Commissioner

AFFIRMED

COUNSEL

Roy E. Wheeler, St. Johns
In Propria Persona

M. Lando Voyles, Pinal County Attorney, Florence
By Craig Cameron, Deputy Pinal County Attorney
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which
Chief Judge Eckerstrom and Judge Espinosa concurred.

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M I L L E R, Presiding Judge:

¶1 Roy Wheeler appeals from the trial court's denial of his motion for relief from an order of forfeiture against property he claims to own. Because Wheeler was not a party, and thus lacked standing to file for such relief, we affirm.

Factual and Procedural Background

¶2 In the limited record before us, the following facts are undisputed. In November 2012, the state filed a notice of pending uncontested forfeiture, *see* A.R.S. §§ 13-4307, 13-4309, seeking to forfeit \$5,809.65 in cash. Wheeler did not file a claim to the property as required by A.R.S. §§ 13-4309(2) and 13-4311(E) and (F). Approximately two months later, the state filed an application for order on forfeiture and allocation of property. In February 2013, the trial court entered an order of forfeiture against the property and awarded it to the state. Three months later, the state moved to amend the order of forfeiture to reflect the amount of currency actually seized. The court granted the motion and amended the order to reflect the amount of \$5,913.49.

¶3 In November 2013, Wheeler filed a "notice" contending that the property was improperly seized and forfeited. In February 2014, the trial court, presumably treating Wheeler's pleading as a motion pursuant to Rule 60(c), Ariz. R. Civ. P., denied relief and affirmed the February 2013 final order and judgment, as amended. Wheeler appealed from the court's February 2014 order, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(2). *See* Ariz. R. Civ. App. P. 1 ("An appeal may be taken by any party aggrieved by the judgment."); *Wieman v. Roysden*, 166 Ariz. 281, 284, 802 P.2d 432, 435 (App. 1990) (under certain circumstances, nonparty "should be permitted to appeal from that part of the judgment affecting him"); *see also State v. Jackson*, 210 Ariz. 466, ¶ 10, 113 P.3d 112, 114 (App. 2005) (appellate court has jurisdiction over any special order made after final judgment, including denial of Rule 60(c) motion).

Standing To Seek Relief

¶4 Wheeler appeals solely from the trial court's denial of his motion for relief under Rule 60(c), which we review for an abuse of discretion. *See Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, ¶ 21, 326 P.3d 292, 296-97 (App. 2014). Rule 60(c) provides that "[o]n motion and upon such terms as are just the court may relieve a party or party's legal representative from a final judgment." Before we can address the merits of Wheeler's appeal, we must first examine whether he was a party and thus had standing to seek Rule 60(c) relief from the order of forfeiture.

¶5 To contest a forfeiture action, one must be a party to the action and have standing. *See State v. Five Thousand Five Hundred Dollars in U.S. Currency*, 169 Ariz. 156, 160, 817 P.2d 960, 964 (App. 1991). One acquires standing in a civil forfeiture action by alleging an interest in the property. *See In re \$70,269.91 U.S. Currency*, 172 Ariz. 15, 19, 833 P.2d 32, 36 (App. 1991). An owner or interest holder alleges an interest by filing a claim against the property. A.R.S. §§ 13-4309(2), 13-4311(D); *see also In re \$70,269.91*, 172 Ariz. at 19, 833 P.2d at 36. Upon filing a proper claim, the owner or interest holder becomes a "claimant" and is entitled to a hearing to adjudicate the validity of his interest. A.R.S. § 13-4311(D); *In re \$70,269.91*, 172 Ariz. at 20, 833 P.2d at 37. In the absence of a valid claim, an owner or interest holder is not a party to the forfeiture action. *See In re \$70,269.91*, 172 Ariz. at 20, 833 P.2d at 37.

¶6 Because Wheeler did not file a claim on the property, he was not a party to the forfeiture action.¹ Thus, he could make no claim under Rule 60(c) for relief from the judgment entered against the \$5,913.49. *See United States v. 8136 S. Dobson Street, Chicago, Ill.*,

¹Wheeler argues that the forfeiture proceeding "ha[d] always been contested," due to his daughter's attempts to recover Wheeler's property from the Superior Police Department. But as outlined above, Wheeler cannot contest a forfeiture proceeding in the absence of a valid claim. *See In re \$70,269.91*, 172 Ariz. at 20, 833 P.2d at 37. Because no claim was filed here, the forfeiture was uncontested.

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125 F.3d 1076, 1082 (7th Cir. 1997). Accordingly, the trial court did not err in denying his motion.

Subject Matter Jurisdiction

¶7 Wheeler argues the trial court lacked subject matter jurisdiction over the property. Lack of subject matter jurisdiction in a forfeiture proceeding may be raised at any time, *In re 1976 Porsche Auto.*, 141 Ariz. 421, 422, 687 P.2d 946, 947 (App. 1984), and it is a question of law we review de novo, *Beatie v. Beatie*, 235 Ariz. 427, ¶ 14, 333 P.3d 754, 757 (App. 2014).

¶8 Assuming for the purpose of addressing his argument that Wheeler has standing to challenge the trial court's jurisdiction, his claim lacks merit. Wheeler's principal assertion appears to be that the state's failure to provide notice of uncontested forfeiture within thirty days from the date the property was seized for forfeiture deprived the court of jurisdiction and rendered the order of forfeiture void.²

¶9 We first note it is unclear whether the property was seized for forfeiture on July 17, 2012, as Wheeler argues, or on November 7, 2012, as the state contends. In any event, assuming arguendo the state provided untimely notice of pending forfeiture, Wheeler does not cite any authority, and we are aware of none, to support his assertion that this alone would render the judgment void. To the contrary, this court has held that jurisdiction is perfected when the property to be forfeited is properly before the court. *See State v. 1810 East Second Ave.*, 193 Ariz. 1, 3-4, 5, 969 P.2d 166, 168-69, 170 (App. 1997).

¶10 According to the state's notice of pending uncontested forfeiture, the seizure for forfeiture was of property seized incident

²Wheeler also argues the property was exempt from forfeiture under A.R.S. § 13-4304. But it is the claimant's burden to prove an exemption. *See* A.R.S. §§ 13-4310(D), 13-4311(M). Wheeler did not contest the forfeiture by filing a claim or petition and only appeals the court's denial of his Rule 60(c) motion. He therefore cannot claim an exemption for the first time on appeal.

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to an arrest or search, pursuant to A.R.S. § 13-4305(A)(3)(a). It is undisputed that the state actually seized the property, and Wheeler points to nothing in the record that would suggest the property was not properly before the court. Therefore, the court had jurisdiction over the property. *See 1810 E. Second Ave.*, 193 Ariz. at 5, 969 P.2d at 170.

Disposition

¶11 For the foregoing reasons, we conclude that Wheeler lacked standing in the forfeiture proceedings. He continued to lack standing in his Rule 60(c) motion for relief from the forfeiture judgment, which the trial court had jurisdiction to enter. The trial court's denial of his motion for relief from judgment is therefore affirmed.